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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER

MEHTA, BHISMA

ART UNIT	PAPER NUMBER
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3767

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	01/19/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 01/19/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcarter@kmob.com
eOAPilot@kmob.com

Office Action Summary

Application No.

10/677,757

Applicant(s)

BIERMAN, STEVEN F.

Examiner

Bhisma Mehta

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 07 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-9 and 11-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-9 and 11-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 November 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The use of the trademark Arrow MAC has been noted in the title of this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 3-8, and 11-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Bierman et al (U.S. 6,582,403). Bierman et al disclose a releasable medical line securement device having a retainer (16) having a base (18), a plurality of posts (70) disposed upon the base of the retainer, and at least one cap (20, 22) covering each post. In lines 45-59 of column 6, Bierman et al teach that the posts may

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be part of the base (18). In Figure 9 the posts (70) are shown as comprising a shaft and at least one protrusion or head (98). Each cap comprises a recess (72) configured to receive the protrusion of one of the plurality of posts. The cap is attached to the base of the retainer by a flexible connection (36). Bierman et al teach that, in the covered configuration, the protrusion is within the recess and that, in the uncovered configuration, the protrusion is not within the recess. In lines 11-34 of column 17, Bierman et al teach that a medical article having holes may be used with the retainer where the holes of the medical article are placed over the posts and then the cap is placed in a covered position. This serves to secure and inhibit the medical article from lateral and longitudinal motion. As to claims 3, 4, 11 and 12, in lines 1-4 of column 22, Bierman teaches that the recess (258) may one or more chamfered edges. Recess (258) is similar to recess (72). The chamfered edges of the recess are not shown. However, in Figure 30 and in lines 43-59 of column 22, Bierman et al teach that the chamfered edge (288) of receptacle (284) slopes inward toward the center of the receptacle to cause a snap-fit arrangement with the keeper (272). Therefore, a chamfered edge on recess (258) would provide a collar on the open end of the recess where the opening of the collar is smaller than a dimension of the protrusion of the post that is received in the recess and thus causes the protrusion to be held in a snap-fit arrangement. The retainer is disposed on the upper surface of an anchor pad (14) and there is an adhesive layer (23 in Figure 1) on the lower surface of the anchor pad. Figure 7 shows a tab (90) on the cap (22) which is used to enable one to remove the cap from the post. In Figure 19, the base, post, and cap are shown to be integrally

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formed. Bierman et al teach the method of releasably securing a medical article to a patient as claimed. In lines 12-32 of column 23, Bierman et al teach that the various features disclosed may be interchanged between the different embodiments.

The applied reference has a common inventor with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being obvious over Bierman et al (U.S. 6,582,403) in view of Bierman (U.S. 6,491,664). Bierman et al ('403) disclose the invention substantially as claimed. However, Bierman et al ('403) do not disclose the size of the hole of the medical article being smaller than the size of the head of the post. Bierman et al ('664) disclose a releasable medical line securement system where the medical article has holes (74) which are smaller than the heads (30) of the posts and teach, in lines 13-26 of column 9, that the smaller sized holes inhibit movement of the

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medical article. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the holes of the medical article of Bierman et al ('403) to make them smaller than the head of the post as taught by Bierman et al ('664) as both Bierman et al ('403) and Bierman et al ('664) teach using a securement device in the form of a retainer to anchor a medical article to a patient's body and Bierman et al ('664) specifically teaches that the smaller holes on the medical article are used to prevent movement of the medical article.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(I)(1) and § 706.02(I)(2).

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1, 3-9, and 11-18 are rejected on the ground of nonstatutory

obviousness-type double patenting as being unpatentable over claims 39-41 of U.S.

Patent No. 6,582,403. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are all drawn to a retainer having a plurality of posts.

Response to Arguments

8. Applicant's arguments, see lines 12-29 of page 11, filed November 7 2006, with respect to claims 1, 8, and 17 have been fully considered and are persuasive. The rejection of claims 1, 8, 17 over Bierman (U.S. Patent No. 6,213,979) has been withdrawn.

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9. Applicant's arguments with respect to claims 1, 8, and 17 being rejected over Bierman et al (U.S. Patent No. 6,582,403) have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bhisma Mehta whose telephone number is 571-272-3383. The examiner can normally be reached on Monday through Friday, 7:30 am to 3:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on 571-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



BM

KEVIN C. SIRMONS
SUPERVISORY PATENT EXAMINER

